KENNETH D. SULZER (SBN 120253)
ksulzer@constangy.com
STEVEN B. KATZ (SBN 139078)
skatz@constangy.com
SARAH KROLL-ROSENBAUM (SBN 272358)
skroll-rosenbaum@constangy.com
CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
1800 Century Park East, Suite 600
Los Angeles, California 90067
Telephone: (310) 909-7775

Attorneys for Defendant
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

[ADDITIONAL COUNSEL ON NEXT PAGE]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LAMAR DAWSON, individually and on behalf of all others similarly situated, Plaintiff, vs. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION and PAC-12 CONFERENCE, Defendants.	Case No. 16-CV-05487-RS **REPLY IN SUPPORT OF MOTION TO DISMISS** Date: April 20, 2017 Time: 1:30 p.m. Courtroom: Courtroom 3, 17th Floor Before: Hon. Richard Seeborg

JEFFREY A. BERMAN (SBN 50114)
jberman@seyfarth.com
DIANA TABACOPOULOS (SBN 128238)
dtabacopoulos@seyfarth.com
KIRAN A. SELDON (SBN 212803)
kseldon@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendant
Pac-12 Conference

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I. SUMMARY OF REPLY.

Plaintiff fails to cite a single case which holds that student-athletes are employees under the FLSA or California law. Defendants have cited numerous authorities—including the Seventh Circuit's very recent on-point decision in *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285 (7th Cir. 2016), the Department of Labor's authoritative interpretation of the law contained in its FIELD OPERATIONS HANDBOOK, a uniform body of California case law, and numerous cases and statutes in other jurisdictions—all holding as a matter of law that student-athletes are not employees. To rule for Plaintiff, the Court would have to disregard all of this authority and disrupt a more-than century-old tradition of amateurism in college athletics. Plaintiff provides no reason for the Court to take this unprecedented leap.

Plaintiff's entire argument is that, because college football is "big business," the players on its biggest teams—the ones that generate more in revenues than they cost to run—deserve to be "employees" under the FLSA. There is, however, no case law—and Plaintiff cites none—holding that FLSA coverage turns on the amount of money an activity generates. *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983), applies the same "economic reality" test to both non-profit and for-profit institutions. Other courts also have rejected the relevance of revenue-generation to determining coverage under the FLSA and California law. And not even Judge Hamilton's short concurrence in *Berger*—the only case Plaintiff cites for this proposition—actually says this. All Judge Hamilton said (without citing *any* supporting authority or explaining his reasoning) was that he was "less confident" *Berger's* conclusion should apply to all college athletes.

Finally, Plaintiff fails to address the litany of policy and practical issues associated with a "revenue"-based test for employment status. Some sports are not "revenue" sports, including many played by female athletes. And not even all football programs are the same. Some generate profits, but most others do not—even among elite Division I schools. The "revenue" test Plaintiff advocates would thus create a host of equity issues between different college sports and even within football programs. If Plaintiff wants Division I football to have special status, that is an issue for Congress

and state legislatures. The answer is not a judge-made "revenue" test that no judge has ever endorsed.

II. The FLSA Claim Rests On A Theory That Is Legally And Factually Implausible.

Plaintiff Lamar Dawson agrees that not all college student-athletes are "employees" under the Fair Labor Standards Act. He concedes that the vast majority of student-athletes—all of those who play "non-income generating sport[s]" (Opp. at 9:25) like men's wrestling, or women's lacrosse, or the track and field athletes who were held not to be "employees" under the FLSA in *Berger*—are not "employees" under the FLSA. Nevertheless, he asks this Court to create a- special employment status exception for a small subset of college student-athletes, namely, "Division I FBS football players—scholarship athletes playing for big-money football programs . . . ." (Opp. at 9:22-23.) These student football players deserve to be paid to play in Plaintiff's view, even though his fellow student-athletes who play less mainstream/lower profiled sports do not.

The Court's inquiry on a motion to dismiss is guided by the "plausibility" standard established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). A complaint satisfies the plausibility standard when the factual pleadings "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 677, 129 S.Ct. 1937. This means that Plaintiff must show "more than a sheer possibility that a defendant acted unlawfully." *Id*.

Here, the "big money" special employment status exception that Plaintiff urges is based on legal and factual premises that do not withstand scrutiny. Under *Iqbal* and *Twombly*, his complaint must be dismissed with prejudice.

A. Plaintiff's Legal Theory Rests On Implausible Premises.

Plaintiff's rationale for selective FLSA protection for student-athletes runs like this: In *Bonnette*, the Ninth Circuit held that in determining whether an employment relationship existed under the FLSA, the "ultimate determination must be based 'upon the circumstances of the whole

activity'" (704 F.2d at 1470)—what is commonly labeled the "economic reality" of the relationship. *See also Berger*, 843 F.3d at 290, n.3 (collecting other cases where multi-factor tests were rejected in favor of an overarching "economic realities" approach). Plaintiff reasons that

> "the nature of the relationship between Division I FBS football players—scholarship athletes playing for big-money football programs—and the NCAA and conferences they work for is fundamentally different than the non-income generating relationship between . . . track and field athletes, who are non-scholarship athletes playing a non-income generating sport—and their university. . . . For Division I FBS football, on the one hand, the activities are ***primarily for the economic benefit of the NCAA and its conferences.*** For non-revenue generating sports, on the other hand, the sports are ***primarily for the benefit of the student athletes***, and thus non employer-employee relationship is created in the latter instance." (Opp. at pp. 9:22-26, 15:23-26 [emphasis in original].)

Plaintiff does not explain what he means by "revenue generating." Clearly the phrase cannot be taken literally, because ***all*** sports—including men's wrestling, women's lacrosse, and the track and field athletes who were held not to be "employees" under the FLSA in *Berger*—generate ***some*** revenue. Matches or meets are held, fans purchase tickets and attend. But they do not "generate[] billions of dollars a year in revenue" (Opp. at p. 2:10), which Plaintiff claims Division I FBS football does. Thus, what Plaintiff means by "revenue generating" is "***net*** revenue generating"—*i.e.*, that Division I FBS football generates more in revenue than it costs schools to maintain their teams.

Thus, Plaintiff's prolix defense of his complaint boils down to the following syllogism:

> ***Major Premise****:*
> Student-athletes are "employees" for FLSA purposes if, and only if, their teams would not exist but for the economic benefit of their schools. Where their teams exist for the benefit of student-athletes without regard to economics, they are not "employees."
>
> ***Minor Premise***:
> Division I FBS football teams would not exist but for the economic benefit to their schools, since they "generate[] billions of dollars a year in revenue . . . ."
>
> ***Conclusion***:
> Division I FBS football players are "employees" for FLSA purposes.

This syllogism has no legal or factual support. As explained below, (1) there is no case holding that "revenue generation" is relevant (let alone determinative) under the FLSA. *Bonnette*

itself rejected that legal premise, as have numerous other FLSA cases; (2) a "revenue generation" rule is unworkable in practice for a number of reasons, including that not all Division I FBS schools actually generate net revenues; (3) Judge Hamilton's brief concurrence does not support Plaintiff's broad "revenue" rule, and no deference is owed to an (unreasoned and widely criticized) opinion issued by the outgoing General Counsel of the NLRB. Deference *is* owed, however, to the long-held views of the Department of Labor, the agency that is actually charged with enforcement and interpretation of the FLSA.

1. PLAINTIFF'S MAJOR PREMISE THAT "REVENUE" MATTERS HAS BEEN REJECTED BY THE NINTH CIRCUIT.

In order to establish his major legal premise, Plaintiff must demonstrate that the existence of an employment relationship under the FLSA turns on whether the putative employer derived a net gain (or loss) from the work performed by the employee. ***In other words, Plaintiff must show profitability itself is sufficient to create an employment relationship under the FLSA***. Plaintiff does not—because he cannot—cite a single decision under the FLSA that adopts this standard.

Indeed, the Ninth Circuit squarely ***rejected*** it in *Bonnette*, where the defendants—"public social service agencies"—urged the Circuit to decline to apply the multifactor employment test that is applied to "profit-seeking employers." *Bonnette*, 704 F.2d at 1470. The Court rejected the argument, applying the framework to the "public social service agencies" and holding that "[t]he 'economic reality' was that the appellants employed the chore workers to perform social services for the benefit of the recipients." *Id.* If profitability were relevant to the "economic reality" inquiry under the FLSA—as Plaintiff assumes—then the Ninth Circuit would have reached the opposite conclusion. The fact that *Bonnette* applied the same test to for-profit and non-profit organizations means that profitability is simply not relevant.

In other FLSA contexts, too, courts have rejected the notion that an entity's profitability is relevant to employment status. In *Valladares v. Insomniac, Inc.*, Case No. EDCV 14-00706-VAP (DTBx), 2015 WL 12656267 (C.D. Cal. Jan. 29, 2015), the Central District squarely rejected the plaintiff's argument that defendant could not invoke the "amusement or recreational establishment"

exemption to FLSA overtime requirements because "it is inequitable to allow [defendant] to use the . . . exemption when its '*revenue is in the millions of dollars*.'" *Id.* at *10 (emphasis added). "If Congress agrees with Plaintiff," the court wrote, "it may amend the FLSA. Until then, a defendant's revenue is irrelevant" to FLSA coverage. *Id.*; see also *Marshall v. New Hampshire Jockey Club, Inc.*, 562 F.2d 1323, 1332 (1st Cir. 1977) ("The economic security of the owner, however, was not made a test for applying the . . . exemption").

In examining the "economic reality" of the relationship between student-trainees and their schools, courts have also rejected the relevance of profitability of the organization. *Ortega v. Denver Inst. L.L.C.*, Case No. 14-cv-01351-MEH, 2015 WL 4576976, at *12 (D. Colo. July 30, 2015) (dismissing cosmetology student's FLSA claim and finding irrelevant that "the school's profits from the school were an integral part of its business"); *Jochim v. Jean Madeline Educ. Ctr. of Cosmetology, Inc.*, 98 F.Supp.3d 750, 759 (E.D. Pa. 2015) (school's "alleged profit from its clinical program does not change our analysis under the FLSA."); accord *Atkins v. Capri Training Ctr.*, Case No. 2:13–cv–06820 (SDW), 2014 WL 4930906 (D.N.J. Oct. 1, 2014).

Further, as explained in Defendants' Motion, California courts also have rejected the notion that the profitability of the alleged employer matters. *Townsend v. State of Cal.*, 191 Cal.App.3d 1530, 1537, 237 Cal.Rptr. 146, 150 (1987) (student-athletes are not employees despite plaintiff's argument that "since intercollegiate athletics are 'big business' and generate large revenues for the institutions who field teams in such competition, the athletes who represent those institutions should be considered to be employees or agents of those institutions under the doctrine of respondeat superior."); *Shephard v. Loyola Marymount Univ.*, 102 Cal.App.4th 837, 844-45 (2002).

The NCAA and Pac-12 are non-profits. (Complaint, ¶¶19, 23.) Under *Bonnette*, that non-profit status does not justify applying a different "economic reality" standard than is applied to for-profit institutions. *Bonnette*, 704 F.2d at 1470. Further, as dictated by the FLSA and California law cases cited above, the fact that particular *activities* undertaken by these non-profits generate revenue or profits "is irrelevant." *Valladares*, 2015 WL 12656267, at *10.

In short, there is no authority to support Plaintiff's profitability exception to the widely-accepted proposition that student-athletes are not FLSA employees. The Court should decline to be the first to create such an exception.

2. PLAINTIFF'S MINOR PREMISE THAT FOOTBALL PROGRAMS ARE ALL "BIG BUSINESS" FLIES IN THE FACE OF INDISPUTABLE HISTORICAL FACTS.

Plaintiff's logic runs aground on the shoals of a simple, unassailable fact: only a bare majority of Division I FBS schools[1] (69 of 125) generate football revenues that exceed expenses. For the rest of Division I FBS schools, football is a net financial loss. And among Division I FCS schools—whose players, by Plaintiffs' logic, would be employees too—only 2% (3 of 124) generate football revenues that exceed expenses. *See* Daniel L. Fuchs, Ph.D., *2004-14 NCAA Revenues and Expenses of Division I Intercollegiate Athletics Programs Report*, pp. 29, 54 (2015) (available at http://www.ncaa.org/about/resources/ research/archives-ncaa-revenues-and-expenses-reports-division).[2] ***For every Division I football team that makes more money than it costs, there are two***

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[1] Division I FBS ("Football Bowl Series") schools are the bowl-eligible football schools that form the most elite level of college football, while the remaining Division I football schools (FCS, or "Football Championship Series") play in a post-season championship tournament. (*See* Complaint, ¶ 37.) As alleged in Plaintiff's Complaint, "[d]ifferent rules and requirements are imposed on FBS and FCS schools and participants in their football programs, including scholarship limitations and post-season play and also include economic differences, such as minimum paid attendance requirements for FBS schools." (*Id.*)

[2] Professor Fulk's analysis of revenues and expenses of college athletics are "legislative facts." "Legislative facts are 'established truths, facts or pronouncements that do not change from case to case but [are applied] universally, while adjudicative facts are those developed in a particular case.'") *Korematsu v. U.S.*, 584 F. Supp. 1406, 1414–15 (N.D. Cal. 1984) (*quoting United States v. Gould*, 536 F.2d 216, 220 [8th Cir.1976]). As such, Fed. R. Evid. 201 does not apply, and this Court may take notice of Professor Fulk's data in its legal reasoning without granting judicial notice. *See Toth v. Grand Trunk R.R.*, 306 F.3d 335, 349 (6th Cir. 2002) ("As a general matter, judicial notice is available only for 'adjudicative facts,' or the 'facts of the particular case,' as opposed to 'legislative facts' . . . .")

Indeed, the Ninth and Seventh Circuits have previously done so. *See O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049, 1056 n.4 (9th Cir. 2015) (taking notice of legislative facts contained in 2014 Revenue and Expenses Report), *cert. denied*, 137 S.Ct. 277, 196 L.Ed.2d 33 (2016); *Banks v. National Collegiate Athletic Ass'n*, 977 F.2d 1081, 1099 (7th Cir. 1992) (citing "National Collegiate Athletic Association, Revenues and Expenses of Intercollegiate Athletic

and one-half which cost more than they make.
Under Plaintiffs' own analysis, this means that Division I FBS football teams exist *not* for their own economic benefit, but like "non-income generating sport[s]," "primarily for the benefit of the student athletes." The fact that half of Division I FBS teams generate enough revenue to cover their own expenses and also provide funding for "non-income generating sport[s]," is irrelevant to the fundamental—and historical—purpose of college football. The ***team itself*** owes its existence to the purposes that originally lead to the creation of college athletics, and that still apply today—college football teams exist to foster the benefit of athletic competition for all students.

This purpose applies as much to men's wrestling, women's lacrosse, the track and field athletes held not to be "employees" in *Berger*, and to every other "non-income generating sport." It defines the "economic reality" for all college sports equally and, as recognized in *Berger*, means that student-athletes are not "employees" under the FLSA.

Indeed, Plaintiff's "revenue generation" rule could create arbitrary differences among football programs, providing a small subset of student-athletes with FLSA coverage. Football players at USC play the same game as players at U.C. Berkeley. Each field is the same 100 yards; each game is the same 60 minutes. The rules of play are the same. The same NCAA regulations govern both. But under Plaintiff's legal theory, he is entitled to minimum wage and overtime, but U.C. Berkeley's players are not.[3] (And even within the same school, a football player could be an

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Programs 15 [1990] [estimating that sports revenues at Division IA schools exceeds one billion dollars per year] . . . .") (Flaum, J., concurring in part and dissenting in part).

The Ninth and Seventh Circuits are not alone in giving substantial credence to Professor Fulk's data. A leading text on the economics of college sports also relies on his study. *See* Randy R. Grant, John C. Leadley and Zenon X. Zygmont, THE ECONOMICS OF INTERCOLLEGIATE SPORTS 169-71 (2d Ed. 2015). Plaintiff not only cites THE ECONOMICS OF INTERCOLLEGIATE SPORTS in his complaint, he specifically cites findings in the text that are derived from (and attributed ***solely*** to) Fulks. *See* Complaint, ¶ 38. *See also* footnote 3, *infra*. Plaintiff accordingly relies on a portion of Fulk's data in his complaint. Relevant portions of Professor Fulk's study, and THE ECONOMICS OF INTERCOLLEGIATE SPORTS are attached to this Reply as, respectively, Appendices A and B.

[3] Plaintiff's proffered exception to the usual rule that student-athletes are not "employees" would also seem to apply to those few high school programs that turn a profit. And they do exist. *See Special report: An inside look at the finances behind HS football in the Dallas area*,

employee in one year and not an employee in the next because the football program operated at a profit in the first year and a deficit in the second.)[4]

Finally, FLSA coverage would differ among sports under Plaintiff's "revenue generation" exception. If the focus is "revenue," a football player (in a "big business" football program) might be an employee, while a wrestler (or golfer, or sprinter, etc.) at the same school might not. Plaintiff does not explain why the former should receive special FLSA coverage, while the latter (who may devote as much or more time and effort to perfecting their respective sports) are, in accordance with Berger and the DOL Handbook, outside of the FLSA's coverage.

B. PLAINTIFF CANNOT DISTINGUISH THE RELEVANT AUTHORITIES OR CITE A SINGLE AUTHORITATIVE CASE HOLDING THAT STUDENT-ATHLETES ARE EMPLOYEES.

In order to disregard *Berger* in favor of the rule urged by Plaintiff, this Court needs an answer to the question posed in Section I(A)(1): ***why should a small subset of student-athletes get the benefit of an exception to the general (and undisputed) rule that student-athletes are not "employees" under FLSA?*** In the absence of any answer, there is absolutely no reason to adopt the rule suggested by Plaintiff. In fact, in response to *ten* cases, *three* state statutes, and a DOL guidance stating that student-athletes are not employees as a matter of law (*see* Mot. at 8-9), Plaintiff offers nothing authoritative.

The *Berger* concurrence is not authority for Plaintiff's position. The *only* case that Plaintiff cites to support his "revenue generation" exception is Judge Hamilton's concurrence in

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SPORTSDAYDFW (Nov. 2011) (available on the Internet at http://sportsday.dallasnews.com/high-school/sportsdaydfw/2011/11/17/special-report-an-inside-look-at-the-finances-behind-hs-football-in-the-dallas-area) (identifying high school football programs in the Dallas-Ft. Worth region that generate more revenue than they cost to run, including Trinity High School).

[4] Having players weave in and out of "employee" status based on a football program's profitability also creates administrative challenges. Would players be eligible for Workers' Compensation and Unemployment Insurance benefits in a profitable year, and ineligible the next unprofitable year? Moreover, treating players in profitable football programs as "employees" is likely to create a competitive imbalance within Division I football, as recruits with better prospects are more likely to choose schools that provide employment benefits.

Berger. (Opp. at 9). But ***not even Judge Hamilton adopts that exception***. He only states in a short, two-paragraph concurrence that he is "*less confident*" that *Berger*'s reasoning extends to "students who receive athletic scholarships to participate in so-called revenue sports. . . ." *Berger*, 843 F.3d at 294. Judge Hamilton cites no authority to support a "revenue" exception, nor does he address the implications of the fact that, despite the aggregate revenues generated by college football, most Division I teams cost more than they generate.

But the *Berger* majority expresses no such doubts and does not share Judge Hamilton's concerns. Instead, the majority held at the pleading stage that, "***as a matter of law***, student athletes are not employees under the FLSA" and "no discovery or further development of the record could help [them]." *Id.* (emphasis added). Judge Hamilton expressed his doubts in a concurrence because no one else on the panel harbored them. (And, since the full circuit denied rehearing *en banc*, this Court can conclude that no other circuit judge harbored such doubts.)

The *Berger* majority opinion is not "narrow." Plaintiff tries to claim that *Berger*'s "narrow decision" is inapplicable here. (Opp. at 1:16-17). But as even Judge Hamilton's concurrence recognized, the plaintiffs pursued a "broad theory"—one that "included … any college athlete in any sport." *Berger*, 843 F.3d 285, 294 (7th Cir. 2016) (Hamilton, J. concurring). Even under that "broad theory," the Seventh Circuit had no trouble concluding that student-athletes were not employees "as a matter of law."_Nothing in *Berger*'s language or reasoning supports that the result should be any different for football players. In fact, as Plaintiff's own Complaint alleges, the NCAA's core rules applicable to Division I football players *are no different* than for other Division I athletes, including requirements that "*all* participating student-athletes shall act with honesty and sportsmanship," shall "be in good academic standing," and shall refrain from "unethical conduct" and "sports wagering." Dkt. 1, Complaint, ¶¶39-41, ¶¶51-58. Consistent with this, Plaintiff also alleges that all Division I athletes are subject to the same NCAA rules regarding financial aid and restrictions on payment for athletic services. *Id.*

Based on Plaintiff's own allegations, which this Court must accept as true, there is, therefore,

no basis to distinguish Division I football players from other Division I athletes in terms of their relationship with their schools. (The one difference on which Plaintiff relies, so-called "revenue generation," does not transform football players into employees, as explained above.) Thus, *Berger* cannot be confined in the way that Plaintiff would like. If anything, this case is even more appropriate for resolution at the pleading stage because, if colleges are not employers, organizations like the NCAA and Pac-12 that are one step farther removed certainly cannot be.

***Berger* is not distinguishable.** Plaintiff tries to create the appearance of a split between the Seventh and the Ninth Circuits based on the fact that *Berger* declined to apply *Bonnette's* multi-factor test to the unique circumstances of college athletics. (*See* Opp. at pp. 8-9.) But as Defendants explained in the Motion (and Plaintiff completely ignored), *Berger* applies the *same* "economic reality" standard as *Bonnette*. The Seventh and Ninth Circuits are in perfect accord.

Further, the Ninth Circuit (like the Seventh Circuit) will decline to apply the *Bonnette* multi-factor test when the facts do not suit the test. *Bonette* itself held that its four-factor test is "not etched in stone and will not be blindly applied." The "ultimate determination must be based 'upon the circumstances of the whole activity.'" *Bonette*, 704 F.2d at 1470.

Similarly, in *Hale v. Arizona*, 993 F.2d 1387 (9th Cir.) (*en banc*), *cert. den.*, 114 S.Ct. 386 (1993), the Ninth Circuit held that *Bonnette* was "not a useful framework" when "the dispute is fundamentally about whether a person can "plausibly be said to be 'employed' in the relevant sense at all?" *Hale*, 993 F.2d at 1394 (declining to apply the *Bonette* factors to the question of whether FLSA protections extended to prison inmate labor). The Seventh Circuit, based on an analysis identical to *Hale*, reached the same conclusion. *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992) (declining to apply *Bonette* factors to prison labor because they do not adequately capture the "economic reality" of the relationship); *Hale*, 993 F.2d at 1394 (concurring with *Vanskike*).

Hale, *Vanskike* and *Berger*, like this case, are about whether a person could "plausibly be said to be 'employed' in the relevant sense at all?" *Hale*, 993 F.2d at 1394. Thus, under both binding Ninth Circuit authority and persuasive Seventh Circuit authority, the Court can (and should)

decline to apply the *Bonette* factors to student-athletes. *See Berger*, 843 F.3d at 290. Plaintiff offers this Court no good reason to depart from *Berger*.

Plaintiff's NLRB authority is neither binding nor persuasive. Plaintiff's reliance on a NLRB Regional Director's ruling in *Northwestern University* (Case 13-RC-121350), is misplaced for three reasons. First, the Regional Director's opinions concerning the relationship of student-athletes to their schools under the NLRA is not persuasive in this case, which involves the relationship of student-athletes to athletic ***organizations*** (to which their schools belong) under a different statute, the FLSA.

Second, the Regional Director simply assumes, as does Plaintiff, that because college football generates substantial revenues, the purpose of having teams (as opposed to stadiums, licensing or broadcast operations) is to generate revenue. As discussed above, the indisputable facts contradict that assumption.

Third, the Regional Director's ruling was ***reversed*** by the National Labor Relations Board, which dismissed the union election petition at issue.[5] *See* 2015 NLRB LEXIS 613 (Aug. 17, 2015). The NLRB concluded that "it would not effectuate the policies of the [NLRA] to assert jurisdiction in this case, even if we assume, without deciding, that grant-in-aid scholarship players are employees within the meaning of the" Act. *Id.* The Board reasoned that, "because of the nature of sport leagues" and "the composition and structure of FBS football (in which the overwhelming majority of competitors are public colleges and universities over which the Board cannot assert jurisdiction), it would not promote stability in labor relations to assert jurisdiction in this case." *Id.*

Since the Regional Director's decision was not adopted by the Board, it is entitled to no deference. *See Bowen v. Georgetown University Hospital*, 488 U.S. 204, 212, 109 S.Ct. 468, 473, 102 L.Ed.2d 493 (1988).

Plaintiff also relies on Memorandum GC 17-01 recently issued by the outgoing General

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[5] Ironically, Plaintiff introduces his discussion of the Regional Director's reversed opinion with the heading "The NLRB Considers Football Players to be Employees." (Opp. at 14:13.) The "NLRB" is the ***Board***, not one of its prosecutors—especially when the Board reverses.

Counsel (GC) of the NLRB. Opp. at 15. The Memo merely articulates the GC's own "prosecutorial position," however. Dkt. 43-2, Memo, p. 23. It is not a ruling of the NLRB. It is, therefore, entitled to no weight. *Bowen*, 488 U.S. at 212, 109 S.Ct. at 473 ("We have never applied the principle of [deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice. To the contrary, we have declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question…'")

Because the NLRB has expressly declined to take a position on the employee status of student-athletes—and has refused to exercise jurisdiction even if they are employees—the GC Memo is entitled to no deference.

The DOL guidance, which interprets the relevant statute, is entitled to deference. There is even a bigger problem with Plaintiff's reliance on the views of the NLRB's prosecution arm—the Board's expertise is confined to the National Labor Relations Act, ***not*** the Fair Labor Standards Act. *See Price v. Stevedoring Services of America, Inc*. 697 F.3d 830 (9th Cir. 2012) (noting "*Skidmore* strongly suggest[s] that it is an administrative entity's statutorily delegated authority to administer a statute that qualifies it for *any kind* of deference in the first place.").

However, the Department of Labor—the administrative agency charged with interpretation and enforcement of the FLSA—***is*** entitled to deference. *Christensen v. Harris County, et al*., 529 U.S. 576, 587, 120 S. Ct. 1655, 1663, 146 L.Ed.2d 621 (2000). The DOL has long been of the view that student-athletes are ***not*** "employes" under the FLSA.

The DOL's *Field Operations Handbook*, § 10b03(e), analogizes student athletics to "dramatics, student publications, glee clubs, bands, choirs, debating teams, [and] radio stations"—all activities which, despite their respective "revenue generating" properties—exist "for the benefit of the participants as a part of the educational opportunities provided to the students by the school." The DOL concludes that none of these opportunities are "work of the kind contemplated by [the FLSA] and do not result in an employer-employee relationship between the student and the school . . . ." *Id.* In light of the economic realities discussed above this analogy is makes perfect sense.

College football ***teams*** exist for the benefit of students, even though, for a fortunate few programs, the demand for college football makes it possible for the schools to engage in ancillary operations to generate surplus revenue for other school programs.

Berger thus was correct to give this longstanding agency interpretation due deference, and to conclude that, "[b]ecause NCAA-regulated sports are 'extracurricular,' 'interscholastic athletic' activities, we do not believe that the Department of Labor intended the FLSA to apply to student athletes." 843 F.3d at 293; *id.* at 202 (FOH "certainly [is] persuasive"); *see also id.* at 293 ["[w]e find the FOH's interpretation of the student-athlete experience to be persuasive."])

In short, Plaintiff's defense of his complaint rests two highly implausible and legally insupportable premises: (1) that the existence of an employment relationship under the FLSA turns on whether the "employer" makes money from the "employees" work, and (2) that Division I FBS football teams exist for the purpose of making money for their schools.

Plaintiff cites no authority to support either premise. He wants this Court to disregard a recent, persuasive and directly on point ruling from the Seventh Circuit, the long-established views of the federal agency charged with interpreting, implementing and enforcing the FLSA, and the view of *all* of the courts to have considered the issue. Instead, Plaintiff asks the Court to rely on an overturned Regional Director decision, and the questionable prosecutorial position of a ***different*** federal agency concerning a *different* statute. That would be an unprecedented disruption of FLSA jurisprudence—one that, if it is to occur at all, must come from Congress.

II.
PLAINTIFF FAILS TO ADDRESS PRECEDENT HOLDING THAT STUDENT-ATHLETES ARE NOT "EMPLOYEES" UNDER CALIFORNIA LAW

Plaintiff cannot dispute that every case to have considered the issue has held that student-athletes are not employees under California law—under workers' compensation law, in tort, and under the state's anti-discrimination laws. Mot. at 12-16. He instead devotes a good portion of his Opposition to a "strawman" argument—to proving that California Labor Code § 3352(k)'s exclusion of student-athletes from state worker's compensation coverage applies by its terms only to worker's

compensation. He all but ignores the real point of Defendants' argument—that the most recent state cases extend the policy underlying § 3352(k) from worker's compensation ***to other employee protection statutes***. The most recent of those cases—*Shephard v. Loyola Marymount Univ.*, 102 Cal.App.4th 837, 125 Cal.Rptr.2d 829, 833–35 (2002)—relies on § 3352(k) to find that student-athletes are not "employees" for purposes of applying state workplace discrimination laws. If student-athletes are not "employees" under antidiscrimination laws, they cannot be "employees" under wage-and-hour laws.

Unable to distinguish *Shepard*, Plaintiff argues it is "unpersuasive" because "much has changed concerning the status of athletes since the time that *Shephard* was decided, including the way the courts now view the industry-like multi-billion dollar financial status of the NCAA." (Opp. at p. 23:10-12.) But the *Shepherd* court was well aware of the "industry-like multi-billion dollar financial status" of major college sports when it concluded that student-athletes were not "employees" for the purpose of applying state antidiscrimination laws. In fact, it stated:

> "It is a matter of common knowledge that colleges and universities in California, in varying degrees, maintain athletic programs which include a number of sports, such as golf, tennis, swimming, track, baseball, gymnastics and wrestling. ***It is also well known that of all the various sports programs, at least in California, only two, i.e., basketball and football, generate significant revenue***. These revenues in turn support the other nonrevenue producing programs. [¶] Thus, conceptually, the colleges and universities maintaining these athletic programs are not in the 'business' of playing football or basketball any more than they are in the 'business' of golf, tennis, or swimming. Football and basketball are simply part of an integrated multisport program which is part of the education process. Whether on scholarship or not, the athlete is not 'hired' by the school to participate in interscholastic competition." *Shephard*, 102 Cal. App. 4th at 844-45, 125 Cal. Rptr. 2d at 834 (*quoting Townsend v. State of California*, 191 Cal.App.3d 1530, 1536, 237 Cal.Rptr. 146, 149 [1987]) (emphasis added).

Nevertheless, it concluded that the statement of broad Legislative policy announced in § 3352(k) applied with equal force to antidiscrimination laws. There is no conceivable reason why a state court would not draw the same conclusion regarding wage and hour laws, and Plaintiff offers none.[6]

[6] Plaintiff also cites inapplicable "control" factors—which are used to determine joint employer and independent contractor status under state law—to supposedly demonstrate that

In sum, as with his FLSA claims, Plaintiff's theory under California law depends on the Court rejecting as "unpersuasive" a large body of existing well-settled authority rejecting the employee status of student-athletes. The Court should decline to do so. Any change of this magnitude, which overturns long-settled precedent and a 100+ year-old tradition of amateurism, must come from the legislature. (In fact, state legislatures have moved in the opposite direction, enacting statutes specifically stating that student-athletes are *not* employees. (*See* Mot. at p. 8, n.4.)

III. CONCLUSION.

For the reasons set forth above, Defendants respectfully request that this Court grant the Motion to Dismiss with prejudice.

DATED: March 27, 2017 CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

By: /s/*Kenneth D. Sulzer*
Kenneth D. Sulzer
Steven B. Katz
Sarah Kroll-Rosenbaum

Attorneys for Defendant
National Collegiate Athletic Association

DATED: March 27, 2017 SEYFARTH SHAW LLP

By: /s/ *Kiran A. Seldon*
Jeffrey A. Berman (SBN 50114)
Diana Tabacopoulos (SBN 128238)
Kiran A. Seldon (SBN 212803)
SEYFARTH SHAW LLP

Attorneys for Defendant
Pac-12 Conference

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student-athletes should be employees. Opp. at 18. These factors all beg the question whether what student-athletes do is "work" to begin with. The California legislature and every California court to have considered the question have said it is not. Cal. Labor Code §3352(k); *Townsend*, supra; *Shepard*, supra. Further, *Berger* already considered NCAA's "elaborate system of eligibility rules" for student athletes, and concluded that they cut against a finding of employment status. 843 F.3d at 291. [T]hese rules define what it means to be an amateur or a student-athlete," *Berger* concluded, which reflects a "tradition of amateurism," not an employment relationship. *Id*.

Appendix A

Revenues & EXPENSES

2004 – 2014

NCAA® DIVISION I INTERCOLLEGIATE ATHLETICS PROGRAMS REPORT

NCAA®

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
P.O. Box 6222
Indianapolis, Indiana 46206-6222
317/917-6222
www.ncaa.org
September 2015

Report Compiled By: Daniel L. Fulks, Ph.D., CPA
Professor Emeritas
University of Kentucky

PREFACE AND ACKNOWLEDGMENTS

This report represents the 2015 edition of Revenues and Expenses of NCAA Division I Intercollegiate Athletics Programs. Although editions prior to 1989 were conducted, independently of the NCAA by Professor Mitch Raiborn of Bradley University, editions subsequent to that date have been joint efforts of the NCAA research staff and me. This edition includes data for the fiscal years 2004 through 2014.

Both the format and content of the study continue to evolve. The 2014 reporting consists of four separate segments – one for each of the three Division I subdivisions and one for all Division I Men's and Women's Basketball. Separate reports for Divisions II and III will be issued later this year. The feedback we have received from readers of previous editions indicates that the operating environment and financial aspects in each division and subdivision are sufficiently different to warrant separate reports. Starting in 2008 the format for the report is significantly different from that of previous editions, and the reader is encouraged to read the Introduction for explanation of these changes. Most data reported for fiscal years prior to 2004 are not comparable to those of subsequent years.

We believe this report provides valuable insight into the financial state of affairs in intercollegiate athletics and the changing environment in which college and university athletics programs operate. As always, reader comments, inquiries, and/or suggestions are welcome and appreciated, as we are commencing work on the next edition soon.

It is also relevant to note that in the spring of 2004, the National Association of College and University Business Officers (NACUBO)/ NCAA Task Force completed a year-long project aimed at improving the consistency of reporting and the quality of financial data related to intercollegiate athletes. This project resulted in numerous changes to our survey instrument, which were implemented with the fall 2004 data collection and are reflected in reports subsequent to that date.

I express my sincere appreciation to Kathleen McNeely, Chief Financial Officer, and Todd Petr, Managing Director of Research for the NCAA, for providing me the opportunity to conduct this study and the freedom to carry it out as I saw fit. Their enthusiastic support is not only sincerely appreciated but is vital to the continuation of this project. Very special thanks go to Nicole Hollomon, Associate Director of Research, and to Erin Irick, Research Contractor for their many hours of data compilation, programming and analysis. Thanks also to my fellow consultant and colleague Maria DeJulio of the NCAA Research Department. Her energetic support and assistance, as well as warm collegiality, made completion of this year's report possible and enjoyable.

We also thank the representatives of the NCAA member institutions who responded to the survey at a time when demands upon athletics administrators for information are sometimes overwhelming. Confidentiality was assured and will be honored.

We hope readers will find the report interesting and useful. Please direct comments or questions to me at the address below.

Daniel L. Fulks, Ph.D., CPA
danfulks@aol.com
859/583-3037

Table of Contents

EXECUTIVE SUMMARY

NCAA Revenues and Expenses of Division I Intercollegiate Athletics Programs Report

Fiscal Years 2004 through 2014

This report provides summary information concerning revenues and expenses of NCAA Division I athletics programs for the fiscal years 2004 through 2014. It is the result of data compiled during the fall of each of those years. Although similar studies have been conducted for the NCAA since 1969, significant changes in data collection and reporting render those reports non-comparable to those of 2004 and beyond.

Objectives. The primary objective of the 2015 edition of this report is to update the information provided in previous reports concerning financial aspects of intercollegiate athletics programs. A second objective is to provide an analysis of revenue and expense trends over time of athletics programs within each of the respective NCAA Division I subdivisions. A third objective is to provide data relevant to gender issues.

Methodology. The survey was distributed to all NCAA Division I member institutions with a usable response rate of 100 percent. In all cases, respondents were instructed to limit their responses to intercollegiate athletics programs only, excluding intramural and club programs. The data were solicited in conjunction with the annual Equity in Athletics Disclosure Act (EADA) data collection but with greater detail of information requested. Since confidentiality was assured for responding schools, readers are directed to the U.S. Department of Education website and various media outlets to obtain information on specific institutions.

Changes and Revisions. There were substantial changes incorporated with the 2004 fiscal year and continued throughout this edition, including:

- The use of audited financial data;
- The designation of generated revenues, including only those revenues earned by activities of the athletics programs, independent of institutional support;
- The designation of allocated revenues, which include direct institutional support, indirect institutional support, student fees and direct governmental support;
- The reporting of total revenues as distinguished from generated revenues after excluding allocated revenues;
- The inclusion of additional data concerning expense items, including indirect institutional support, facilities maintenance and rental, severance pay and spirit groups;
- The reporting of more detailed information related to salaries and benefits; and
- The almost exclusive use of median values, with means used in the percentile and distribution tables.

The last of these reporting revisions is of particular significance. First, the change from means, as reported prior to the fiscal 2004 year, to medians renders the data reported in those prior years non-comparable to those reported in subsequent editions, including this 2015 edition. Second, the reader should be aware that median values are not additive. This is of particular importance with tables that report line items and totals. Moreover, for any reported item, if at least one half of the respondents report zero values, the median value will be zero. The use of medians is in keeping with generally accepted statistical methodology utilized by researchers and mitigates the effect that extreme responses, either high or low, have on means. Comparisons with median

values and, especially, frequency distributions also better enable institutional officials to determine their relative position within their peer group.

Findings and Observations. Following are general "global" findings and observations for the eleven-year period, with related table numbers shown in parentheses. Readers are referred to the Introduction for a more detailed listing of the findings and to the respective tables for the supporting data.

- There was an upward movement in median generated revenues for Division I institutions from 2013 to 2014 — FBS = 6.1 percent increase; FCS = 9.1 percent increase; DI w/o FB saw median generated revenues increase by 9.8 percent in the past year. (2.1)
- Total expenses for the last year increased at a slower rate than generated revenues for Division I institutions. FBS median expenses increased 2.8 percent from the prior year, the increase was 4.6 percent at the FCS level and the increase was 2.1 percent at DI w/o FB institutions. (2.1)
- A related observation is the portion of total athletics revenues that are allocated by the institutions — 20 percent in the FBS; 71 percent in the FCS; 76 percent in DI w/o FB. This rate remained steady in all three subdivisions and represents the extent to which the institution is subsidizing athletics. (3.14, 4.14, 5.14)
- Of particular interest are the growth rates in total expenses after removal of the inflationary effect — 0.2 percent decrease in the FBS; 1.5 percent increase in the FCS; and 0.9 percent decrease in DI w/o FB. (3.3, 4.3, 5.3)
- The increase gap, which measures the difference in growth rates of athletics spending and overall institutional spending, was lower than the previous year, but still showed that athletics expenditures grew at a faster rate than institutional expenditures. In FBS, the median percentage increase in athletics expenses was 2.3 percent higher than the median increase in institutional expenses. The gap was 2.0 percent at the FCS level and 1.4 percent among the Division I institutions without football programs. (2.7)
- A total of 24 athletics programs in the FBS reported positive net revenues for the 2014 fiscal year. The net gap between the "profitable" programs and the remainder, over $23 million, was greater than was observed in 2013. (3.5)
- As in prior years, three revenue sources accounted for 75 percent of generated revenues at the FBS level. These were ticket sales, contributions and NCAA/Conference distributions. (3.14)
- Similarly, in all subdivisions, two expense line items, grants-in-aid and salaries and benefits, accounted for more than 50 percent of total expenses. (3.15, 4.15, 5.15)
- In all subdivisions, the number of participating student-athletes remains fairly constant, while the expense per student-athlete continues to increase slightly, as a result of rising expenses. (2.1)
- Total athletic expenditures as a percentage of total institutional expenditures increased by approximately 0.1 percentage points since 2013. (2.7) For the 2014 fiscal year, FBS Athletics expenditures were 5.6 percent of total institutional budgets; FCS were 7.0 percent; DI w/o FB were 6.0 percent. It should be noted that this percentage does not include revenues generated by athletics. When generated revenues are netted against expenses, the median percentage of athletics expenditures of total institutional expenditures remains less than three percent in the FBS.

INTRODUCTION

Revenues and Expenses of NCAA Division I Intercollegiate Athletics Programs Report

Fiscal Years 2004 through 2014

BACKGROUND AND CHANGES

The 2008 edition of Revenues and Expenses of Intercollegiate Athletics Programs reflected significant changes in the collection, classification and reporting of data related to the financial aspects of intercollegiate athletics. The changes were in response to heightened interest in the financial area from the media, the public and from NCAA leadership and were designed to render the reported information more relevant, meaningful and useful. The primary objective then and now is to isolate the financial impact of athletics on the respective **educational institutions**, rather than the surplus or deficit of the athletics budget. The 2015 edition continues that effort.

Revenue Definitions. Revenues appearing on the athletics budget are grouped as either (1) allocated revenues or (2) generated revenues. Allocated revenues are comprised of:

- student fees directly allocated to athletics;
- financial transfers directly from the general fund to athletics (i.e. direct institutional support);
- indirect institutional support, such as the payment of utilities, maintenance, support salaries, etc. by the institution on behalf of athletics; and
- direct governmental support, which is the receipt of funds from state and local governmental agencies that are designated for athletics.

Generated revenues are produced by the athletics department and include ticket sales, radio and television receipts, alumni contributions, guarantees, royalties, NCAA distributions and other revenue sources that are not dependent upon institutional entities outside the athletics department.

Expense Definitions. Similarly, some expense items have been grouped as either (a) those paid by the athletics department or (b) those paid by outside parties. Unless guaranteed in amount by the institution, these third party payments should not be included in determining the net financial results of the athletics operations. In addition, indirect support from the institution, such as facilities maintenance, insurance, utilities, etc., has been isolated and reported as a line item on both the revenue and the expense side. Since indirect support is excluded from generated revenues, the resulting expense item is included in the net cost to the institution.

Net Results. New terminology for the net operating results of the athletics department was also introduced in the 2008 report. "Net generated revenue" results when total generated revenues exceed university paid (or guaranteed) expenses. A "negative net generated revenue" results when university paid (or guaranteed) expenses exceed generated revenues. These are generally recognized terms in the economics literature.

Reporting of Median Values. Also significant in the 2008 report was the change from reporting **average** (or mean) data to **median** data. The impetus for this change was the impact that unusually large (outlier) revenue items, primarily alumni and booster contributions, have had on average amounts in recent years. Moreover, for most comparative purposes, median statistics are more meaningful than are averages. Mean data are still reported in the percentile tables, as well as the distribution tables.

The caveat is that median data can also be misleading. First, unlike average data, medians are not additive. Thus, tables including "total" values may be confusing. Second, there are many instances in the tables where subdivision median values are zero. This results when at least one half of the responding institutions report zero values for a given line item. In such cases, the resulting median, the midpoint value, will be zero.

Historical Comparability. Because of the substantial changes in data collection and reporting, comparisons with years prior to 2004 are no longer meaningful. Thus, the 2004 fiscal year is a benchmark year. This 2015 edition provides summary information concerning revenues and expenses of NCAA Division I and its three subdivisions for the 2004 through 2014 fiscal years, i.e., institutions' fiscal years which ended within those respective calendar years. The data were collected via a survey conducted in connection with data collection mandated by the federal Equity in Athletics Disclosure Act (EADA), the results of which are close to 100 percent usable response rates.

Similar studies were conducted for the NCAA under the previous format since 1969, with resulting reports published under the same title periodically from 1970 through 2004. The corresponding reports have been published and are available on the NCAA website. Surveys prior to 1993 were conducted independently of the NCAA, by Dr. Mitchell Raiborn of Bradley University, and the data collected are not in the possession of nor under the control of the NCAA.

Other Changes. Other changes in data collection and reporting were implemented with the 2008 report and are continued with this year's study. The result is better and more useful reported data in several respects:

1. New line items for operating expenses were added for severance pay, game expenses, membership dues, spirit groups, facilities maintenance and rental, and indirect institutional support. The results provide more detailed information and a reduction in the amount reported for the line item in "other" expenses.
2. Percentile tables reporting net generated revenue for programs and sports now reflect the removal of allocated revenues.
3. New tables were added to show more information for salaries and benefits, both in total and by sport. Compensation accounts for more than 30 percent of total operating expenses.
4. New tables have been added to report expense items for the four quartiles of total expense levels. This allows comparisons among institutions of similar budget size.

The 2004 fiscal year was also the first year in which audited data were utilized, as well as the initial year for data to be submitted electronically by the respective institutions. Better quality data and more useful reporting result from these changes.

OBJECTIVES

The first objective of the 2015 edition of Revenues and Expenses of Intercollegiate Athletics Programs Report is to update the information in the previous reports concerning financial aspects of intercollegiate athletics programs. As stated above, comparisons are more meaningful for fiscal years after 2004. Current data are presented concerning sources of revenues (ticket sales, television, etc.) and objects of expenditures (grants-in-aid, coaches' salaries, etc.) Revenue and expense data are categorized by program (men's and women's) and by the specific sports of football and basketball. Limited information is also presented for other NCAA sanctioned sports.

An additional objective is to provide a basis for analysis of the revenue and expense trends of athletics programs within each of the respective Division I subdivisions. Thus, all data for a particular subdivision are shown in a self-contained section in the report, although some summary data for all Division I member institutions are provided in a summary section at the beginning of the report.

Additionally, section VI of the report provides aggregated data for all Division I basketball programs.

A final objective of the report is to provide data relevant to gender issues. Tables throughout the report provide comparisons of revenues and expenses of men's and women's programs within each subdivision.

METHODS

All NCAA Division I member institutions, including provisional members provide data annually via the NCAA Financial Reporting System. In all cases, respondents are clearly instructed to limit their responses to intercollegiate athletics only, excluding intramural and club sports. Collection instructions also request that data be separated by gender, which enables data for men's and women's programs to be presented separately.

The financial data requested included: total revenues and expenses by program (men's and women's); total revenues and expenses by sport; total revenues by source (such as ticket sales, student fees, and television receipts); total expenses by expense object (such as grants-in-aid, salaries, and travel), and categorized salary information. Organizational data, such as the number of participating athletes, the number of sports offered, the cost of grants-in-aid and other similar information are also requested. Some of those data are presented in this report, while others may be found in other NCAA publications (See www.NCAA.org.)

As noted, response rates for all three subdivisions were 100 percent. Thus, readers are able to compare financial results for one member institution with the median and mean results for those members in the same subdivision. Readers may determine how their institutions' athletics programs are faring, relative to other similar institutions. They may also see how their institutions' financial trends in recent years compare with the medians for similar institutions. Some comparisons may also be drawn among the results in the various subdivisions. These comparisons are presented in tabular form in the summary section of the report.

NOTE: These financial data were solicited in conjunction with the gathering of information relative to the Equity in Athletics Disclosure Act (EADA). **Because confidentiality was assured to respondents, neither the NCAA nor the author is able to provide data from individual institutions.** To obtain such financial information readers are directed to the U.S. Department of Education Website to obtain EADA information for specific institutions. Readers should be cautioned that the Department of Education EADA reports do not eliminate allocated revenues from the data. The result is that many, if not most institutions report break-even results, since institutional support covers any resulting deficit.

ORGANIZATION OF THE REPORT

The financial information in this report is classified and presented in detail by subdivision, with men's and women's basketball information also provided for the entire division. The reported numbers consist almost entirely of medians and frequency distributions of means for the respective subdivisions. Partial financial data for the fiscal years 2004 through 2013 are also provided for comparative purposes. Prior years' data, although not comparative, may be found in earlier editions of the report by the same title.

There are seven sections of the report:

Section I – Introduction and Survey Methodology. This section provides a background for the study and its stated objectives. A description of the survey instrument is given, as well as an analysis of the number and relative proportion of respondents from the respective subdivisions.

Section II – Summary Information. Summary tables are presented in this section showing median total revenue and expense data for each subdivision, as well as net generated revenues (surpluses and deficits). Tables also show average number of sports offered, average number of student-athletes, and average expense per student-athlete. These tables make it possible to see overall results and to make comparisons across subdivisions.

Sections III through V – Subdivision Information. Each of the three subdivisions is reported separately in these sections. Medians are shown for generated revenues, total revenues, total expenses, revenues and expenses by sport, revenues and expenses by gender and net operating results. Frequency distributions are provided for each set of means. Additional data are reported for salaries and benefits.

Section VI – Division I Combined Basketball. This section presents a summary of basketball operations for all Division I institutions.

Appendix – Glossary. The appendix provides definitions of terms as they are used in the survey and the report.

SUGGESTIONS FOR THE READER

Several basic considerations should be weighed when using the information in this report:

1. An individual institution's actual results may differ greatly from that institution's divisional median or average; no two institutions operate in identical environments or under identical circumstances. The varying sizes of institutions and their budgets, as well as the markets within which the institutions operate, may have dramatic effects on financial results. In addition, there are inherent differences in fiscal demands and resources of public institutions and those of private institutions.

2. There are significant differences across the various subdivisions. For instance, athletics programs offering football operate in a different environment from those which do not, and the impact of the differences noted above within a subdivision are likely to be even greater when making comparisons across different subdivisions. Also noteworthy is the fact that the proportion of private versus public institutions varies by subdivision.

3. Revenues and expenses which are not specifically related to men's or women's programs have been classified as non-gender or, in some cases, administrative. Examples of such expenses would be those related to academic support centers or training facilities utilized by all student athletes. Although it may be possible for many member institutions to allocate such revenues and expenses among male and female student-athletes, the inconsistencies among allocation methods of the institutions and lack of precision would result in misleading data. Until these inconsistencies and imprecisions are remedied, such items will be reported separately.

4. Readers are encouraged to utilize the percentile distributions provided for each subdivision. These data can be particularly helpful in observing the financial position of the reader's institution relative to all others. The data also reflect the extent of the gap between the financially successful programs and those that are not.

Throughout the report, it is hoped that the information presented in a table is clear and self-explanatory. Brief explanations of tables are provided as deemed necessary. Please refer to the glossary in the final section for definitions of terms as they are used in this report. The report is available online (See www.NCAA.org). Additionally, a brief video presentation regarding finances of intercollegiate athletics is available at the NCAA website. (Video Link)

FINDINGS AND OBSERVATIONS

Following are partial findings and observations, summarized by Division I subdivision for the 2014 fiscal year, with comparisons to the 2004 through 2013 fiscal years. Because of the significant changes in data collection and reporting, trends including years prior to 2004 are not included. The related table numbers are indicated in parentheses.

FOOTBALL BOWL SUBDIVISION (FBS)

- Median generated revenues increased by 6.1 percent, nearly doubling the 3.2 percent increase from 2012 to 2013. Median generated revenues have increased by 94.4 percent since the 2004 fiscal year. (2.1)
- Median total expenses increased by 2.8 percent, as compared to 10.6 percent from 2012 to 2013. Over the past two years, generated revenues grew by 9.5 percent and total expenses by 13.7 percent. (2.1)
- Median total expenses have increased by over 120.6 percent since the 2004 fiscal year.
- The median negative net generated revenue for all schools, representing expenses in excess of generated revenues, moved from $11,623,000 in 2013 to $14,734,000 in 2014. This represents a 26.8 percent increase from 2013. (2.3)
- Median negative net generated revenue for the 101 schools reporting losses decreased by only 3 percent from 2013. (3.5)
- The largest generated revenue of $193,875,000, when compared to the median generated revenue of $44,455,000 in 2014, is indicative of the disparity in the FBS. (2.5) This disparity is also reflected in the quartile table. (3.8, 3.16)

- Similarly, the largest total expense was $154,129,000, while the median was $63,959,000, indicative of the varying budget sizes. (2.6) See also Table 3.10 and 3.23 for quartile data. These tables also accentuate the marked differences among Division I subdivisions.
- Generated revenues for men's programs decreased by 2.3 percent from 2013, including a 2.9 percent inflationary effect. Thus, the real decrease in men's generated revenues was 5.2 percent. Generated revenues for women's programs decreased by 14.6 percent, which included a 2.5 percent inflationary effect, yielding a 17.1 percent real decrease. (3.3)
- A total of 24 FBS athletics programs reported positive net generated revenues in 2014. This is a increase from 20 in 2013. (3.5)
- The median net generated revenues for those surplus programs was $8,449,000 in 2013 and $6,071,000 in 2014, while the median net deficit for the remaining programs was $14,904,000 in 2013 and $16,964,000 in 2014. The gap between the financially successful programs and others remained relatively even at just over $23,000,000 in 2014. (3.5)
- Between 50 and 60 percent of football and men's basketball programs have reported net generated revenues (surpluses) for each of the nine years reported, while the dollar amount has increased slightly but steadily each year. (3.6)
- Ticket sales and contributions from alumni and others continue to be the highest categories for generated revenues. The former accounted for approximately 25 percent of generated revenues and 20 percent of total revenue, while the latter accounted for approximately 26 percent of generated and 21 percent of total. NCAA and conference distributions are accounting for an increasing proportion of generated (24 percent) and total (20 percent) revenue. This trend is likely to continue as conference television contracts become more lucrative in the future. Together, these three line items accounted for over three-quarters of generated revenues. (3.14)
- Similarly, three line items made up almost two-thirds of total expenses for the subdivision. Salaries and benefits at about 34 percent and grants-in-aid at 15 percent were the dominant expense lines. The latter follows the national trend of tuition increases, while the former appears to be market driven. Thus, the efforts to control athletics costs are frustrated by a lack of control over the largest two expense lines. Facilities maintenance and rental weighed in at approximately 14 percent of total expenses as the next largest line item for FBS institutions. (3.15)
- The highest coaches' salaries were incurred in football, men's basketball, women's basketball and men's ice hockey respectively. (3.12a and b)
- The median expense per male and female student-athletes increased slightly. (2.2)
- Significant differences exist between Public and Private schools in this and the other subdivisions.

FOOTBALL CHAMPIONSHIP SUBDIVISION (FCS)

- Median generated revenues increased from 2013 by 9.1 percent, as compared with a 1.1 percent increase from 2012 to 2013. (2.1)
- Median total expenses increased, by 4.6 percent from 2013, as compared to a 2.7 percent increase from 2012 to 2013. (2.1)
- Median negative net generated revenue, representing expenses in excess of generated revenues moved from $5,907,000 in 2004 to $11,041,000 in 2014. Thus, the median losses for the subdivision's schools continue to grow, increasing by 1.9 percent since 2013 and 86.9 percent since 2004. (2.3)
- The largest generated revenue for fiscal year 2014 of $20,911,000 compared with median generated revenue of $4,137,000 are indicative of the disparity in the FCS. (2.5) This is also reflected in the quartile table (4.8) and the percentiles table. (4.16)
- Similarly, the largest total expense was $43,767,000, while the median was $15,154,000, indicative of the varying budget sizes. (2.6) This table also reflects the substantial difference in median budget size between the FBS ($63,959,000) and the FCS ($15,154,000) total expenses. Also see Table 4.10 for quartile data.
- Generated revenues for men's programs increased by 2.2 percent from 2013, while generated revenues for women's programs increased by 7.2 percent. After adjusting for inflation, however, there was

a decrease for men's programs is 0.8 percent, and the increase for women is 3.9 percent. (4.3)

- As with revenues, table 4.3 reflects the portions of increases in expenses that were the result of inflation. After adjusting for the nearly 3.1 percent inflationary increase in total expenses, the real change was a 1.5 percent increase. (4.3)
- As in previous years, no FCS athletics programs reported net generated revenues in 2014. The median negative net generated revenue (expenses in excess of generated revenues) in 2013 was $10,833,000 and $11,041,000 in 2014. The net losses have increased fairly steadily over the eleven - year period. (4.5)
- Only 2.0 percent of football, 3.0 percent of men's basketball programs, and 0.0 percent of women's basketball programs reported net generated revenues (surpluses) for 2014, which was consistent with recent years. These net generated revenues were minimal, however the median losses for the remaining programs in 2014 are $2,179,000 for football, $828,000 for men's basketball, and $962,000 for women's basketball. There is also an unusual spike in Men's Basketball positive net generated revenue reported for 2014. (4.6)
- Ticket sales (15 percent), contributions from alumni and others (27 percent), and NCAA and conference distributions (17 percent) continue to carry the load as a percentage of generated revenues. Guarantees and options now account for 12 percent of generated revenues at the median FCS institution.(4.14)
- Similarly, two line items made up 58 percent of total expenses for the subdivision. Salaries and benefits at 32 percent and grants-in-aid at 26 percent are the dominant expense lines. The former follows the national trend of tuition increases, while the latter is apparently market driven. Thus, efforts to control athletics costs are frustrated by a lack of control over the largest two expense lines. No other expense line item is significant across the subdivision. (4.15)
- The highest salaries were incurred in football, ice hockey and basketball, respectively, on the men's side, and basketball and ice hockey programs on the women's side. (4.12a and b)
- Allocated revenues (those provided by the institution or state government) as a percentage of total revenues have remained steady at 71 percent since 2006. (4.14)
- Significant differences exist between Public and Private schools in this and the other subdivisions.

DIVISION I WITHOUT FOOTBALL

- Median generated revenues increased by 9.8 percent from 2013, after seeing a 10.1 percent increase from 2012 to 2013. (2.1)
- Median total expenses increased by 2.1 percent from 2013, compared with the 8.0 percent increase from 2012 to 2013. Thus, the growth rate of expenses and generated revenues in this subdivision have both increased this past year. (2.1)
- Median negative net generated revenue, representing expenses in excess of generated revenues, at $11,245,000, reflects a 4.9 percent increase from 2013. (2.3) Thus, losses in this subdivision continue to grow at a rate greater than inflation.
- As in the other two subdivisions, the largest generated revenue of $22,303,000 and median generated revenue of $2,667,000 are indicative of the disparity in the subdivision. (2.5) This is also reflected in the quartile table (5.8) and percentiles table. (5.16)
- Similarly, the largest total expense was $44,549,000, while the median was $14,332,000, indicative of the varying budget sizes. (2.6) This table also reflected the substantial difference in budget size among the three subdivisions. Also see Table 5.10 for quartile data and 5.22 for percentiles.
- Generated revenues increased by 15.7 percent from 2013 for men's programs, while women's programs saw a 1.0 percent decrease. Revenues not allocated to a specific gender increased by 13.0 percent since 2013. (5.3)
- Table 5.3 reflects the portions of increases in revenues and expenses that were the result of inflation and the portions that reflect the "real" changes. For example, after adjusting for the 3.0 percent inflationary increase, there was actually a 0.9 percent decrease in total expenses for the subdivision. (5.3)

- No athletics program in this subdivision has reported positive net generated revenues since 2004, when one reported small net generated revenues. The median negative net generated revenue (expenses in excess of generated revenues) in 2014 was $11,245,000. The net losses have increased steadily over the eleven-year period, from $5,367,000 in 2004. (5.5)
- The number of men's basketball programs reporting net generated revenues has fallen from a high of eight percent in 2004 to a low of seven percent in 2014, moving from $704,000 in 2004 to almost $885,000 in 2014. The losses for the remaining MBB programs have grown from $64,000 in 2004 to $1,358,000 in 2014. Women's basketball losses have grown from $686,000 in 2004 to $1,257,000 in 2014. (5.6)
- As in the FCS, ticket sales (17 percent), NCAA/conference distributions (21 percent) and contributions from alumni and others (30 percent) account for the preponderance of generated revenues. Generated revenues account for only 24 percent of total revenues in the subdivision. (5.14)
- The two line items of grants-in-aid and salaries made up 61 percent of total expenses for the subdivision. Salaries and benefits comprise 32 percent and grants-in-aid 29 percent. Thus, as in all subdivisions, the efforts to control athletics costs are frustrated by a lack of control over the largest two expense lines, both of which are market driven. No other expense line item is significant. (5.15)
- Significant differences exist between Public and Private schools in this and the other subdivisions.

DASHBOARD OBSERVATIONS

As was true with the 2013 data, there are some significant trends of interest among the dashboards indicators (2.7):

- In the FBS, total athletics expenditures as a percentage of the total institutional budget have climbed to 5.6 percent from 4.6 percent in 2004. This indicates that athletics expenses have increased at a slightly higher rate than those of the overall institution. FCS showed an increase from 5.2 percent in 2004 to 7.0 percent in 2014, while Division I schools without football have grown from 4.5 to 6.0 percent. It should be noted, however, that for these purposes, athletics generated revenues have not been netted against expenditures. When these generated revenues are included, the percentages fall significantly, e.g., to less than three percent for FBS schools.
- In all three subdivisions, athletics aid and compensation are the two largest expense items. In the FBS, athletics aid as a percentage of total operating expenses has remained steady around 16.0 percent. FCS and DI without football schools have stayed steady at or slightly below 30 percent for grants-in-aid. Total compensation as a percentage of total operating expenses has increased slightly over time at FBS and DI without football institutions and decreased slightly in FCS.
- Generated revenues as a percentage of athletics expenses, a measure of self-sufficiency, continue to hover around 25 to 27 percent for the FCS and has dropped to 18.6 percent for DI without football. The FBS schools dropped to 71.3 percent from 76.9 percent in 2004.
- The FBS continues to rely heavily on football revenues (45.0 percent), as does, to a lesser extent, the FCS at 24.2 percent.
- Perhaps most importantly, the "increase gap", which measures the difference between increase rates of athletics expenditures and total institutional expenditures, decreased for all three subdivisions. This indicator behaves sporadically and always bears watching.
- One final note is the continued increase in athletics expense per student-athlete for FBS schools, as expenditures increase more rapidly than the number of student-athletes. Although the other two subdivisions experienced slight increases, they were more substantial for FBS schools.

TABLE 3.6
NET GENERATED REVENUES BY PROGRAM
DIVISION I – FBS
Fiscal Years 2004 through 2014

	Generated Revenues Exceed Expenses			Expenses Exceed Generated Revenues		
	Number Reporting	Percent of Total	Median Net Revenue	Number Reporting	Percent of Total	Negative Net Revenue
2014						
Football	69	55%	14,483,000	56	45%	(4,214,000)
Men's Basketball	63	50%	2,762,000	62	50%	(1,339,000)
Women's Basketball	2	0%	437,000	123	98%	(2,150,000)
2013						
Football	69	56%	12,926,000	54	44%	(3,818,000)
Men's Basketball	62	50%	3,657,000	61	50%	(1,252,000)
Women's Basketball	1	0%	871,000	122	99%	(1,961,000)
2012						
Football	67	56%	11,506,000	53	44%	(3,352,000)
Men's Basketball	64	53%	3,068,000	56	47%	(1,154,000)
Women's Basketball	1	0%	1,309,000	119	99%	(1,912,000)
2011						
Football	68	57%	10,264,000	52	43%	(2,824,000)
Men's Basketball	66	55%	3,365,000	54	45%	(1,000,000)
Women's Basketball	0	0%	NA	120	100%	(1,806,000)
2010						
Football	69	58%	9,123,000	51	43%	(2,868,000)
Men's Basketball	67	56%	3,677,000	53	44%	(975,000)
Women's Basketball	1	1%	608,000	119	99%	(1,626,000)
2009						
Football	68	57%	8,805,000	52	43%	(2,697,000)
Men's Basketball	67	56%	2,917,000	53	44%	(873,000)
Women's Basketball	0	NA	0	120	100%	(1,557,000)
2004						
Football	64	55%	7,512,000	52	45%	(1,846,000)
Men's Basketball	67	58%	2,151,000	49	42%	(550,000)
Women's Basketball	3	3%	1,217,000	113	97%	(1,043,000)

TABLE 4.6
NET GENERATED REVENUES BY PROGRAM
DIVISION I – FCS
Fiscal Years 2004 through 2014

		Generated Revenues Exceed Expenses			Expenses Exceed Generated Revenues		
		Number Reporting	Percent of Total	Median Net Revenue	Number Reporting	Percent of Total	Negative Net Revenue
2014							
	Football	3	2%	203,000	121	98%	(2,179,000)
	Men's Basketball	4	3%	1,676,000	121	97%	(828,000)
	Women's Basketball	0	0%	NA	123	100%	(962,000)
2013							
	Football	1	1%	531,000	125	99%	(1,971,000)
	Men's Basketball	4	3%	652,000	122	97%	(811,000)
	Women's Basketball	0	0%	NA	124	100%	(932,000)
2012							
	Football	4	3%	232,000	119	97%	(1,961,000)
	Men's Basketball	4	3%	979,000	118	97%	(759,000)
	Women's Basketball	1	1%	43,000	120	99%	(891,000)
2011							
	Football	2	2%	231,000	120	98%	(1,737,000)
	Men's Basketball	8	7%	477,000	113	93%	(688,000)
	Women's Basketball	1	1%	42,000	119	99%	(835,000)
2010							
	Football	5	4%	378,000	115	96%	(1,615,000)
	Men's Basketball	6	5%	939,000	113	95%	(622,000)
	Women's Basketball	1	1%	66,000	117	99%	(779,000)
2009							
	Football	2	2%	997,000	123	98%	(1,453,000)
	Men's Basketball	8	6%	780,000	117	94%	(601,000)
	Women's Basketball	2	2%	136,000	121	97%	(745,000)
2004							
	Football	7	6%	184,000	108	94%	(1,076,000)
	Men's Basketball	8	7%	269,000	107	93%	(471,000)
	Women's Basketball	2	2%	156,000	111	98%	(547,000)

GLOSSARY

REVENUE ITEMS FROM AGREED-UPON PROCEDURES

Broadcast Television, Radio and Internet Rights Institutional revenue received directly for radio and television broadcasts, Internet and e-commerce rights received through institution-negotiated contracts

Compensation and Benefits Provided by a Third Party All amounts provided by a third party and contractually guaranteed by the institution but not included on the institution's W-2

Contributions Amounts received directly from individuals, corporations, associations, foundations, clubs, or other organizations that are designated, restricted or unrestricted by the donor for the operation of the athletics program. Amounts paid in excess of a ticket's value are included. Contributions include cash, marketable securities and in-kind services or property. Gifts and merchandise from corporate sponsorship agreements are not included here.

Direct Institutional Support The value of institutional resources for the current operations of intercollegiate athletics, as well as all unrestricted funds allocated to the athletics department by the university. Federal Work Study support for student workers employed by Athletics is also included

Direct State or Other Government Support State, municipal, federal and other government appropriations made in support of the operations of intercollegiate athletics. This includes funding specifically earmarked to Athletics by government agencies for which the institution has no discretion to reallocate.

Endowment and Investment Income Endowment spending policy distributions and other investment income in support of Athletics. These categories include only restricted investment and endowment income for the operations of intercollegiate athletics.

Guarantees Revenue received from participation in away games.

Indirect Facilities and Administrative Support The value of facilities and services provided by the institution not charged to Athletics. This may include an allocation for institutional administrative cost, facilities and maintenance, grounds and field maintenance, security, risk management, utilities, depreciation and debt service. This is offset by an equal expense item.

NCAA/ Conference Distributions Revenue received from participation in bowl games and tournaments and all NCAA distributions. Amounts received for direct participation or through a sharing arrangement with an athletics conference, including shares of conference television agreements are included. These amounts are reported by sport if known.

Other Limited to less than five percent of total revenues may appear in this category. Any excess is to be reclassified to other categories.

Program Sales, Concessions, Novelty Sales and Parking Revenue derived from game programs, novelties, food or other concessions, and parking. This does not include sales of game program advertising.

Royalties, Licensing, Advertisements, and Sponsorships All revenue from corporate sponsorships, licensing, sales of advertisements, trademarks and royalties. In-kind products and services are included.

Non-gender revenues and expenses: Revenues and expenses which are not specifically related to men's or women's programs are grouped as either Non-gender or Administrative. Please see Suggestions for the Reader in the Introduction.

Sports-Camp Revenues Amounts received by Athletics for sports-camps and clinics.

Student Fees Student fees assessed by the institution and restricted for support of intercollegiate athletics.

Ticket Sales Revenue received for sales of admissions to athletics events. Included are ticket sales to the public, faculty and students, and money received for shipping and handling of tickets. Not included are ticket sales for conference and national tournaments that are pass-through transactions.

EXPENSE ITEMS FROM AGREED-UPON PROCEDURES

Athletic Student Aid The total amount of athletically related student aid awarded, including summer school and tuition discounts and waivers (including aid given to student-athletes who have exhausted their eligibility or who are inactive due to medical reasons.)

Coaching Other Compensation and Benefits Paid by a Third Party All compensation paid to the coaching staff by a third party and contractually guaranteed by the institution but not included on the institution's W-2. Examples include shoe and apparel contract revenue, housing allowances, compensation from camps, and television and radio income.

Coaching Salaries, Benefits, and Bonuses Paid by the University Gross salaries, bonuses and benefits provided to head and assistant coaches, which includes all amounts attributable to coaching that would be reportable on the university or related entity W-2 and/or 1099 forms. Examples include car stipend, club membership, entertainment allowance, clothing allowance, television income, and tuition remission.

Direct Facilities, Maintenance, and Rental Direct facilities costs charged to intercollegiate athletics, including building and grounds maintenance, utilities, rental fees, operating leases, equipment repair and maintenance, and debt service.

Equipment, Uniforms and Supplies Includes only items that are provided to teams. Equipment amounts are those expended from current or operating funds.

Fund Raising, Marketing and Promotion Costs associated with fund raising, marketing and promotion for media guides, brochures, recruiting publications and such other expenditures.

Game Expenses Game-day expenses other than travel that are necessary for intercollegiate athletics competition, including officials, security, event staff, ambulance, and other such expenditures.

Guarantees Amounts paid to visiting participating institutions.

Indirect Facilities and Administrative Support The value of facilities and services provided by the institution and not charged to Athletics. This support may include an allocation for institutional administrative cost, facilities and maintenance , grounds and field maintenance, security, risk management, utilities, depreciation, and debt service. This is offset by an equal amount of revenue.

Medical Expenses and Medical Insurance Medical expense and medical insurance premiums for student-athletes.

Memberships and Dues Includes memberships, conference and association dues.

Other Operating Expenses Include printing and duplicating, subscriptions, business insurance, telephone, postage, operating and equipment leases, non-team travel and any other operating expense not reported elsewhere. Indirect administration overhead provided by the university is not included.

Recruiting Transportation, lodging and meals for prospective student-athletes and institutional personnel on official and unofficial visits, telephone charges, postage and other such expenditures related to recruiting. Also included is the value of the use of the university's vehicles or airplanes, as well as the in-kind value of loaned or contributed transportation.

Severance Payments Severance payments and applicable benefits recognized for past coaching and administrative personnel.

Spirit Groups Includes support provided for spirit groups, including bands, cheerleaders, mascots, dance teams, etc.

Sports Camp Expenses All expenses paid by Athletics, including non-athletics personnel salaries and benefits, from hosting sports camps and clinics.

Support Staff/ Administrative Salaries, Benefits and Bonuses Paid by a Third Party Includes all compensation paid to the support staff by a third party and guaranteed by the university but included in the W-2 or 1099 forms of the institution. Examples include car stipends, club memberships, clothing allowances, speaking fees, radio and television income, and other related expenditures or in-kind products or services.

Support Staff/ Administrative Salaries, Benefits and Bonuses Paid by the University and Related Entities Gross salaries, bonuses and benefits paid to administrative staff (e.g., football secretary and trainers) that would be reportable on university or related entities W-2 or 1099 forms. Examples include car stipends, club memberships, clothing allowances, speaking fees, radio and television income, and other related expenditures or in-kind products or services.

Team Travel Air and ground travel, lodging, meals and incidentals for competition related to pre-season, regular season, and/or post-season. Any amounts incurred for food and lodging for housing a team prior to a home game should also be included, as should the value of the use of the institution's owned vehicles or airplanes and in-kind value of donor-provided transportation.

OTHER TERMINOLOGY

Allocated Revenues
Revenues allocated by the institution to the athletics program. These include direct institutional support, indirect institutional support (utilities, maintenance, insurance, etc.), student fees, and direct governmental support.

Athletics Aid Equivalencies
Full-time grants-in-aid awarded regardless of their being split among multiple athletes. Thus, four athletes each being awarded one-fourth of a grant would be considered one equivalency.

Capital Expenditures
Also called Balance Sheet Expenditures, these are the additional costs of physical plant assets that provide material benefits extending beyond the current period. Examples would be stadium or arena expansions or training room construction.

Division I without Football
This division was formerly known as Division I-AAA. This group of institutions does not sponsor football, while other requirements are identical to those of the FBS and FCS.

Division II
For Division II institutions, at least 50 percent of all football games must be played against FBS, FCS or Division II teams. At least 50 percent of all basketball games (both men's and women's programs) must be played against Division I or II members. At least four men's and four women's sports must be sponsored. There are no attendance, scheduling, or financial-aid requirements.

Division III
For these institutions, more than 50 percent of all football games must be played against Division III teams or nonmembers who grant financial aid on need only. More than 50 percent of all men's basketball games must be against Division III teams or nonmembers who grant financial aid on need only. At least four men's and four women's sports must be sponsored. There are no attendance or scheduling, and financial aid is not permitted.

Football Bowl Subdivision
This division was formerly known as Division I-A. In accordance with NCAA bylaws, the group includes those institutions that play at least 60 percent of their regular-season football games against other FBS institutions. All but four basketball games (both men's and women's programs) must be against other FBS teams. Seven men's and seven women's, or alternatively six men's and eight women's sports, must be sponsored. There are also requirements for attendance, scheduling and financial aid.

Football Championship Subdivision
This division was formerly known as Division I-AA. These institutions must play more than 50 percent of their regular-season football games against FBS or FCS institutions. All but four basketball games (both men's and women's programs) must be against other Division I teams. Seven men's and seven's women's, or alternatively six men's and eight women's sports, must be sponsored. There are also requirements for scheduling and financial aid.

Generated Revenues
Those revenues generated independently by the athletics program, such as ticket sales, concessions, alumni/booster contributions, and NCAA and conference distributions.

Inflationary Effect

The inflationary effect utilized in some tables is based on the Higher Education Price Index provided by the U.S. Department of Labor and Statistics. The use of this index is intended to reflect the portion of annual increases in revenues and expenses that result from inflation.

Median Values

Median values represent the midpoint of all values reported by respondents. These median values subsequent to the 2003 fiscal period cannot be compared with the mean values reported in prior years. It should also be noted that median values are not additive. Furthermore, if at least one half of respondents report zero values for a line item, the median value for that line will be zero.

Net Operating Results

Total generated revenues less total operating expenses. These results are reported as either Net Generated Revenue (generated revenues exceed expenses) or Negative Net Generated Revenue (expenses exceed generated revenues.)

Non-gender Revenues and Expenses

Revenues and expenses which are not specifically related to men's or women's programs are grouped as either Non-gender or Administrative. Please see Suggestions for the Reader in the Introduction.

Third Party Payments

These are payments to athletics coaches and other personnel from outside parties. Only third party payments guaranteed by the institution are included here. Such payments are included as both revenue and expense lines.

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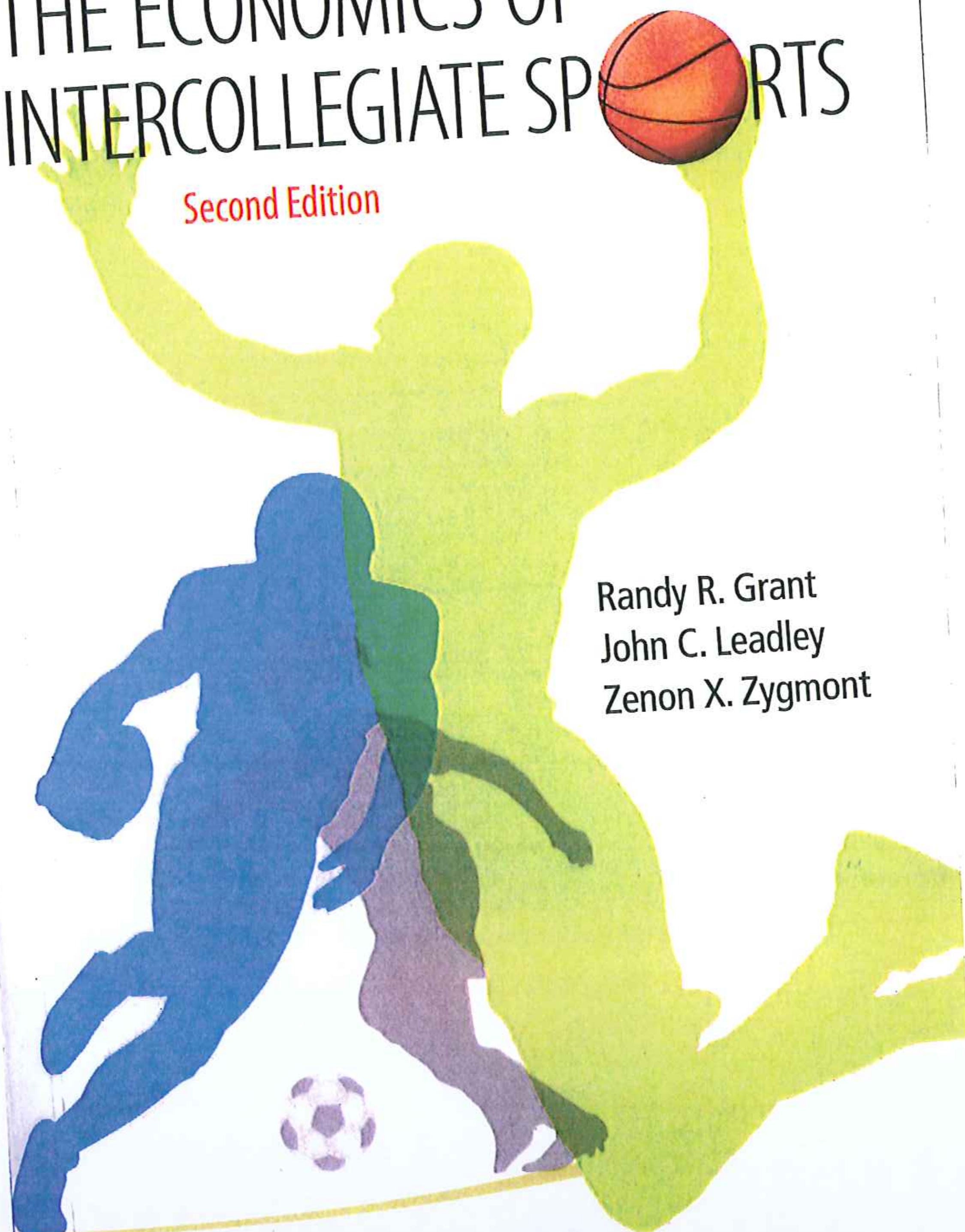
Appendix B

THE ECONOMICS OF INTERCOLLEGIATE SPORTS

Second Edition



Randy R. Grant
John C. Leadley
Zenon X. Zygmont

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revenue to his school. Economists Robert Brown and Todd Jewell have calculated that a star player on the football team or men's basketball team at a Division-I institution generates *US$406,914* and *US$1,194,469* respectively in MRP per season (Brown and Jewell, 2004). Their research also estimates that a star female basketball player generates *US$250,000* (Brown and Jewell, 2006). Providence College economics professor Leo Kahane (2012) conducted a similar study of Division I men's hockey players; he estimated the MRP of the best players to be in the range of *US$131,000–165,000*.[7] Of course, not every player is a star (in the Brown and Jewell studies a star is defined as a player who is drafted by the NFL or NBA). Nevertheless, it seems safe to say that in his three years as a Husky, Mr. Okafor generated revenues for his institution well in excess of his grant-in-aid.[8] To add another example, Baird (2004, p. 221) mentions that in 2001 the *average* revenue created by the 100 players on the Ohio State football team was US$203,000 per player.

> ***Fast fact.*** *During the four years, Patrick Ewing attended Georgetown University (1981–1985), the Hoyas qualified for the NCAA basketball tournament three times and won the 1984 championship. Ewing's MRP during this period was estimated at US$12 million. (Fleisher, Goff and Tollison, 1992, pp. 92–93)*

Few intercollegiate sports make money. Recent information provided by the NCAA (Table 3.4) indicates that of the men's

[7] Huma and Staurowsky (2012) estimate the average "fair market value" of FBS football and DI basketball players to be US$137,357 and US$289,031. This is estimated by applying the current revenue sharing guidelines used by the NFL and NBA in the collective bargaining agreements with the players' union, to the annual football and basketball revenue generated at each institution.

[8] For academic year 2003–2004, Connecticut's website (http://www.bursar.uconn.edu/forms/Tuition_FeesFY04_Undergrad.html) listed estimated total tuition, fees and room and board at US$13,710 and US$24,494 for in and out-of state students respectively. Okafor plays for the Washington Wizards in the NBA.

Table 3.4. Generated revenues and expenses by selected sports in Division I FBS in fiscal year 2010 (median values; amounts in thousands of US$).

	Men's programs			Women's programs		
Sport	Revenues	Expenses	Net revenues	Revenues	Expenses	Net revenues
Baseball	338	1,292	(588)	N/A	N/A	N/A
Basketball	4,776	4,003	788	277	2,168	(1,168)
Crew	N/A	N/A	N/A	105	1,104	(860)
Equestrian	N/A	N/A	N/A	79	910	(854)
Fencing	30	175	(80)	45	244	(96)
Field Hockey	N/A	N/A	N/A	68	817	(714)
Football	16,210	12,367	3,148	N/A	N/A	N/A
Golf	68	382	(228)	48	427	(274)
Gymnastics	61	573	(290)	70	824	(547)
Ice Hockey	919	2,155	(333)	120	1,174	(1,016)
Lacrosse	548	1,161	(460)	157	814	(390)
Rifle	0	28	(28)	31	41	(9)
Skiing	43	379	(190)	43	311	(173)
Soccer	132	811	(501)	67	873	(529)
Softball	N/A	N/A	N/A	66	819	(582)
Swimming	58	625	(448)	47	742	(463)
Tennis	45	448	(290)	27	479	(337)
Track & Field/ X-Country	70	798	(485)	52	941	(596)
Volleyball	162	628	(350)	78	927	(595)
Water Polo	168	539	(335)	35	611	(485)
Wrestling	140	719	(373)	N/A	N/A	N/A
Others	231	365	(273)	14	121	(74)

Note: *Generated revenues* consist "only of those revenues earned by activities of the athletics program" (Fulks, 2011, p. 7) such as ticket sales, NCAA distributions, appearance guarantees, alumni and booster contributions, broadcasting rights, concessions, souvenirs, advertising and sponsorships, endowment income, and other miscellaneous sources. Revenues allocated through direct and indirect institutional support, students fees, direct government support (in other words, any subsidies to the athletics program), and third party support ("payments to athletics coaches and other personnel from outside parties," Fulks, 2011, p. 107) are not **included**. *Allocated revenue* (not listed in Table 3.4) consists of generated revenues plus all these other revenue sources. The *net revenue* figures listed in Table 3.4 are the difference between *allocated revenues* and *expenses*.

sports in Division I-FBS, only basketball and football typically earn revenues in excess of expenses (Fulks, 2011, p. 36). Revenues for DII and DIII sports are substantially lower. As yet, no women's sport is profitable. This means that payments to athletes based on their MRP would result in an inequality because it would depend on the skills of athlete and the popularity, and revenue-generating ability, of their sport. But do not forget that inequality is already present in collegiate sports; the value of an athlete's grant-in-aid is not constant across sports and gender. Even though the star athletes get a full ride, a benchwarmer on the basketball team or a member of the swimming team might be ecstatic if they each receive a partial scholarship and eat meals at the training table. Furthermore, differences in wages and salaries are a part of everyday life; not every chef or accountant is equally productive, hence they do not earn the same pay. Should college athletes be any different?

What conclusion, if any, should we draw at this point? Could *all* college athletes, regardless of gender and sport, be paid their MRP? Certainly! But many — the majority — of student-athletes would get nothing because their MRP is zero. In the cases of low revenue-earning sports like swimming, the value of an athlete's grant-in-aid exceeds his or her MRP, and these athletes would be harmed by changing the system of compensation from one based on grants-in-aid to payment based on productivity. Before such a change is considered a host of questions must be addressed. Should college sports be financially self-supporting? Should higher revenue sports (men's basketball and football) subsidize sports that generate little or no revenue?[9] The answers depend on whether

[9]Here is a contrarian position on the desirability of using football and basketball to subsidize other sports, "the NCAA takes money from financially poor African-American athletes — Division I football and men's basketball players, who generate millions of dollars for the parent cartel and member institutions every year — and redistributes it to middle and upper-income white students (who have grants-in-aid to play on non-revenue sports teams, which are funded largely by football and basketball receipts and are overwhelmingly non-black in composition)". Sanderson (2004)